

ROY D. HEATH)	IN THE CIRCUIT COURT OF
PETITIONER)	RUSSELL COUNTY, ALABAMA
VS.)	CASE NO.: CC 01-30.61
STATE OF ALABAMA)	01-36.61
RESPONDENT)	

ORDER

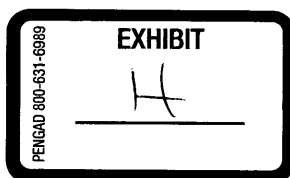
The petitioner, Roy D. Heath, seeks relief from conviction and sentence pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. He cites as grounds for his petition: Ineffective assistance of counsel and lack of jurisdiction to impose sentence.

Petitioner entered a plea of guilty in each of these two cases and was sentenced on May 23, 2001. At the time of his entry of a plea of guilty, he submitted a plea bargain agreement that he voluntarily entered into and stipulated that the sale of a controlled substance occurred within 3 miles of a school and 3 miles within a public housing project. No further proof of this was required. The Petitioner's claim of lack of jurisdiction is due to be dismissed.

As to Petitioner's claim of lack of effective assistance of counsel, and of being coerced into pleading guilty, Petitioner submitted to the Court at the time of entry of a plea of guilty that he entered his pleas of guilty voluntarily and was not coerced into entering the pleas. He submitted a signed statement as to the above and signed a statement that he was satisfied with the legal representation received by his attorney. Petitioner appealed his conviction and both convictions were affirmed by the Alabama Criminal Court of Appeals. The issue of ineffective assistance of counsel should have been raised in a motion for new trial or on appeal, therefore his claims are barred.

It is ORDERED that the petition for relief in both of the above cases is hereby dismissed.

DONE this the 13th day of March 2003.



James R. Heath
JUDGE, CIRCUIT COURT

FILED IN OFFICE
 2003 MAR 13 PM 12:26
 CIRCUIT COURT
 RUSSELL CO., AL

PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

(Pursuant to Rule 32.

Alabama Rules of Criminal Procedure)

FILED IN OFFICE
2002 AUG 28 PM 12:47
CIRCUIT/DIST. COURT
RUSSELL CO., AL.

Case Number

CC-01-30.61, 36.61
ID YR NUMBER

IN THE Circuit COURT OF RUSSELL ALABAMA

Roy David Heath vs. State of Alabama
Petitioner (Full Name) Respondent

[Indicate either the "State" or,
if filed in municipal court, the
name of the "Municipality"]

Prison Number #217344 Place of Confinement Fountain Corr. Facility

County of conviction RUSSELL County, Alabama

**NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY
THE ACCOMPANYING INSTRUCTIONS.**

1. Name and location (city and county) of court which entered the judgment of conviction or sentence under attack RUSSELL County Circuit Court
PHENIX City, Alabama
2. Date of judgment of conviction MAY 31, 2001
3. Length of sentence THIRTY YEARS (30) - 3-COUNTS
4. Nature of offense involved (all counts) DISTRIBUTION OF MARIJUANA - CC-01-30
DISTRIBUTION OF A CONTROLLED SUBSTANCE CC-01-36
POSSESSION OF MARIJUANA CC-01-36
5. What was your plea? (Check one)
(a) Guilty ☒

6. Kind of trial: (Check one)

(a) Jury ☒

(b) Judge only ☒

7. Did you testify at the trial?

Yes ☒

No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒

No ☐

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court ALABAMA COURT OF APPEALS

(2) Result AFFIRMED-NO MERIT BRIEF

(3) Date of result N/A

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court N/A

(2) Result N/A

(3) Date of result N/A

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court N/A

(2) Result N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes _____

No ☒

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

- (a) (1) Name of court _____
(2) Nature of proceeding _____
(3) Grounds raised _____

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____

No ☒

- (5) Result _____

- (6) Date of result _____

- (b) As to any second petition, application, or motion, give the same information:

- (1) Name of court _____

- (2) Nature of proceeding _____

- (3) Grounds raised _____

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____

No ☒

- (5) Result _____

- (6) Date of result _____

- (c) As to any third petition, application, or motion, give the same information (attach additional

(2) Nature of proceeding N/A

(3) Grounds raised _____

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____

No ✓

(5) Result _____

(6) Date of result _____

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc. Yes _____

No _____

(2) Second petition, etc. Yes _____

No _____

(2) Third petition, etc. Yes _____

No _____

**ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION
FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.**

(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:

N/A

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

GROUND(S) OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

✓ A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence, or other relief.

The facts do not merely amount to impeachment evidence; and

the facts had been known at the time of trial or sentencing, the result would probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:

"Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes _____

No ✓

B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

(attach additional sheets if necessary)

C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and (why the) failure to entertain (this) petition will result in a miscarriage of justice."

- ✓ (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- ✓ (2) Conviction obtained by use of coerced confession.
- (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

✓ B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

— C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

— D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

— E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral

15. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

- (a) At preliminary hearing _____

- (b) At arraignment and plea _____

- (c) At trial _____

- (d) At sentencing _____

- (e) On appeal _____

- (f) In any post-conviction proceeding _____

- (g) On appeal from adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes _____ No _____

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes _____ No _____

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) And give date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes _____ No _____

18. What date is this petition being mailed?